

FAIR SHARE HOUSING CENTER

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Defendants Fair Share Housing
Center, Southern Burlington County
Branch of NAACP, Camden County
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By: Peter J. O'Connor, Esq.
Kevin D. Walsh, Esq.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**Newark Coalition for Low
Income Housing, et al.**

Plaintiffs,

v.

**Newark Housing Authority, et
al.**

Defendants,

v.

**Fair Share Housing Center,
Southern Burlington County
Branch of NAACP, Camden County
Branch of NAACP, Camden City
Taxpayers Association,**

Third-party Defendants.

Hon. Dickinson R. Debevoise

Civil Action No. 89-1303 (DRD)

**SETTLEMENT AGREEMENT AND
CONSENT ORDER**

WHEREAS the following two cases brought by Fair Share Housing Center, Southern Burlington County Branch of NAACP, Camden County Branch of NAACP, and the Camden City Taxpayers Association are pending before the New Jersey Superior Court, Appellate Division:

In re Adoption of the 2002 Low Income Housing Tax Credit Qualified Allocation Plan, N.J.A.C. 5:80-33.1 to -33.40, by the New Jersey Housing and Mortgage Finance Agency, Docket No.: A-10-02T2, and In re Allocation of Federal Low Income Housing Tax Credits Under the Urban, Hope VI, and Final Cycles Pursuant to the 2002 Low Income Housing Tax Credit Qualified Allocation Plan, N.J.A.C. 5:80-33.1 to -33.40, by the New Jersey Housing and Mortgage Finance Agency, Docket No.: A-1551-02T2; and

WHEREAS A-10-02-T2 is a challenge to Low Income Housing Tax Credit regulations promulgated by the New Jersey Housing and Mortgage Finance Agency (HMFA) and A-1551-02-T2 is a challenge to certain allocations of tax credits made by HMFA pursuant to those regulations; and

WHEREAS the third-party defendants are alleging in A-10-02-T2 and A-1551-02-T2 that HMFA through its administrative action has violated state and federal statutory and constitutional provisions by perpetuating and exacerbating racial and economic segregation in housing in New Jersey; and

WHEREAS JS Urban Renewal LP, a developer that has been selected to participate in the Newark Hope VI program, was notified by HMFA in October 2002 that it had received an allocation of \$2,100,000 of 2002 tax credits and a reservation of \$999,985 of 2003 tax credits; and

WHEREAS on or about November 20, 2002, Fair Share Housing Center, Southern Burlington County Branch of NAACP, Camden County

Branch of NAACP, and the Camden City Taxpayers Association filed an appeal of HMFA's allocation of tax credits to JS Urban Renewal LP and has appealed other allocations in A-1551-02-T2 to the New Jersey Superior Court, Appellate Division; and

WHEREAS the Newark Housing Authority is the defendant in the subject litigation brought by the Newark Coalition for Low Income Housing that is pending before the Hon. Dickinson R. Debevoise, U.S.D.J.; and

WHEREAS the Newark Housing Authority was required by an Order and a Settlement Agreement dated May 25, 1999 to apply to the United States Department for Housing and Urban Development for a certain Hope VI grant; and

WHEREAS the Newark Housing Authority applied for and received HUD approval of the subject Hope VI grant; and

WHEREAS the Newark Housing Authority on or about March 21, 2003 filed a verified Third-party complaint against Fair Share Housing Center, Southern Burlington County Branch of NAACP, Camden County Branch of NAACP, and the Camden City Taxpayers Association seeking to temporarily and permanently enjoin further state court proceedings by them involving tax credits allocated by HMFA with regard to the redevelopment efforts that form part of the Hope VI program, including a request to enjoin the above-described State Court Appellate Division Tax Credit appeals as they affect or may affect the implementation of the subject HOPE VI grant; and

WHEREAS the Newark Housing Authority in its verified Third-Party Complaint sought to enforce the May 25, 1999 Order and Settlement Agreement referred to above against the third-party defendants by enjoining them from challenging tax credit allocations made to developers, such as JS Urban Renewal LP, with regard to all present and future tax credit allocations made in connection with the Hope VI; and

WHEREAS following an appearance before Judge Debevoise on March 26, 2003 representatives of the Newark Housing Authority (Raymond A. Brown, Esq., Oliver Lofton, Esq., Karen Torian, Harold Lucas), the Newark Coalition for Low Income Housing (Jon Dubin, Esq.), and the third-party defendants (Peter J. O'Connor, Esq. and Kevin D. Walsh, Esq.) met with Special Master Gustav Henningburg, Mary Ann Russ (Abt Associates), Richard Evert, Esq. (NMFA), and others to discuss the possibility of settlement of the case brought against third-party defendants by the Newark Housing Authority; and

✓ WHEREAS the third-party defendants maintain that the claim for ^{an}injunctive in the third-party complaint is without merit, but consider it desirable to settle this action in the manner and upon the terms and conditions hereinafter set forth to avoid further expense, inconvenience, and the distraction of burdensome litigation; and

WHEREAS representatives of the Newark Housing Authority and of Third-party Defendants Fair Share Housing Center, Southern Burlington County Branch of NAACP, Camden County Branch of NAACP,

and the Camden City Taxpayers Association have discussed the terms of a potential settlement with Ms. Russ and Mr. Dubin and have shared with all parties the terms of that proposed settlement; and

WHEREAS it appears that all parties have accepted the terms of the settlement; and

NOW, THEREFORE, subject to final approval of the Court, the parties agree as follows:

1. This Settlement Agreement is between the Newark Housing Authority and Third-party Defendants Fair Share Housing Center, Southern Burlington County Branch of NAACP, Camden County Branch of NAACP, and the Camden City Taxpayers Association.
2. The Third-Party Defendants shall withdraw with prejudice their Appeal pending as A-1551-02-T2 with regard to JS Urban Renewal LP's allocation of \$2,100,000 of 2002 tax credits and reservation of \$999,985 of 2003 tax credits. The Third-Party Defendants' consent to the withdrawal of the appeal with regard to that allocation and that reservation is without prejudice to their right to challenge future allocations and/or reservations of tax credits.
3. A Stipulation of Dismissal shall be filed by the Third-Party Defendants in the Appellate Division within three days of the receipt of this order with copies provided to the parties herein and a copy filed with this Court.

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bers*

4. The Newark Housing Authority shall withdraw its Third-Party Complaint against the Third-Party Defendants by the filing of a Stipulation of Dismissal within five days from the date of this Order, as set forth in paragraphs 4 and 5 herein. Copies shall be provided to counsel for Third Party Defendants. That withdrawal shall be with prejudice and without costs with regard only to JS Urban Renewal LP's allocation of \$2,100,000 of 2002 tax credits and reservation of \$999,985 of 2003 tax credits.

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5. The Newark Housing Authority shall withdraw its Complaint in its entirety and shall withdraw any pending motions, but its claims for injunctive and other relief with regard to any future allocations or reservations of tax credits, other than those allocated to and reserved for JS Urban Renewal LP in October 2002, as described in the previous paragraph, are withdrawn without prejudice.

6. The Newark Housing Authority shall implement the Enhanced Mobility Program set forth in the attached document labeled Exhibit A, a four-page March 31, 2003 memorandum from Mary Ann Russ of Abt Associates. The Third-Party Defendants have agreed not to file an Answer, Affirmative Defenses and Counterclaims in this litigation with regard to the allocation and reservation of tax credits for JS Urban Renewal LP in exchange for the Newark Housing

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Authority's voluntary agreement that it will implement the subject Enhanced Mobility Program.

out { 6. Abt Associates shall monitor the subject Enhanced Mobility Program and provide timely copies of its reports to the Newark Housing Authority, plaintiffs Newark Coalition for Low Income Housing and Third Party Defendants. The oversight and enforcement procedures addressed at pages 4-5 of the May 25, 1999 Settlement Agreement are incorporated herein by reference.

7. This Settlement Agreement is enforceable upon application to the Court and may be modified only with the written consent of the parties and/or by order of the Court. Plaintiffs Newark Coalition for Low Income Housing et al. ^{plaintiffs and} and the third-party defendants shall have standing to enforce this order.

Dated:

DICKINSON R. DEBEVOISE, U.S.S.D.J.

CONSENT TO THE FORM AND
CONTENT OF THIS ORDER

OLIVER LOFTON, ESQUIRE
COUNSEL FOR NEWARK
HOUSING AUTHORITY

PETER J. O'CONNOR, ESQUIRE
COUNSEL FOR THIRD-PARTY
DEFENDANTS

KEVIN D. WALSH, ESQUIRE
COUNSEL FOR THIRD-PARTY
DEFENDANTS